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In re Application of	:	
ODIDI, Isa, et al.	:	
U.S. Application No.: 10/561,700	:	DECISION
Int. Filing Date: 03 June 2004	:	
Attorney Docket No.: 221904-1050	:	
For: PROTON PUMP-INHIBITOR-...	:	
THE ACTIVE INGREDIENT	:	

This is a decision on applicant's petition under 37 CFR §1.78(a)(3), to accept an unintentionally delayed claim for priority, filed in the United States Patent and Trademark Office on 03 February 2010.

The petition is **DISMISSED AS MOOT**.

The instant petition seeks acceptance of a late claim for priority to a prior-filed international application by way of an amendment to the specification.

As set forth in MPEP 1893.03(c), a national stage application filed under 35 U.S.C. § 371 may not claim benefit of the filing date of the international application of which it is the national stage as its filing date is the date of filing of that international application. *See also* MPEP 1893.03(b). In this regard, since the international application is not an earlier application (it has the same filing date as the national stage), a priority claim in the national stage of the international application is inappropriate. Accordingly, it is not necessary for the applicant to amend the first sentence of the specification to reference the international application number that was used to identify the application during international processing of the application by the international authorities prior to commencement of the national stage under 35 U.S.C. § 371.

In the amendment, applicants also add priority claims to prior filed provisional applications. The current procedure where a claim for priority under 37 CFR §1.78(a)(6) is not included in the first sentence of the specification or in an ADS but is included elsewhere in the application within the time period set forth in §1.78(a) and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR §1.78(a)(5)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the application, a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(6). In the instant case, the Office noted the claim for priority of

the prior-filed applications in the published international application, as shown by their inclusion on the filing receipt.

In view of the above, the \$1410 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to Erin Thomson at (571) 272-3292. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to the Examiner of Technology Center AU 1611 for appropriate action on the amendment filed 03 February 2010, including consideration of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5) for benefit of the prior-filed application.



Boris Milef
PCT Legal Examiner
Office of PCT Legal Administration